

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 15-02688-MMM (AS)	Date	February 17, 2016
Title	<u>Hector Ernest v. CMC Warden</u>		

Present: The Honorable	Alka Sagar, United States Magistrate Judge
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Alma Felix

N/A

Deputy Clerk

Court Reporter / Recorder

Attorneys Present for Petitioner

Attorneys Present for Respondent:

N/A

N/A

Proceedings: (IN CHAMBERS) ORDER TO SHOW CAUSE WHY THIS ACTION SHOULD NOT BE DISMISSED

On October 30, 2015 (following the filing of Petitioner's Supplemental Statement and supporting Memorandum and Authorities (Docket Entry Nos. 7-8)), the Court issued an Order for Petitioner to file, by no later than November 19, 2015, a Second Supplemental Statement addressing five issues relevant to statutory tolling and/or equitable tolling -- specifically, (1) what claims were raised in his Los Angeles County Superior Court habeas petition. (If Petitioner has a copy of his Los Angeles County Superior Court habeas petition, he should provide it.); (2) the date on which Petitioner constructively filed his Los Angeles County Superior Court habeas petition. (If Petitioner concedes that he mailed his habeas petition to the Los Angeles County Superior Court on October 17, 2013, he should so state.); (3) why there was a 135-day delay between the denial of his Los Angeles County Superior Court habeas petition and his filing of his California Court of Appeal habeas petition; (4) why there was a 92-day delay between the denial of his California Court of Appeal habeas petition and the filing of his California Supreme Court habeas petition; and (5) whether he is entitled to equitable tolling, giving as much detail as practicable. (Docket Entry No. 19).

The Court's October 30, 2015 Order stated the following: "Petitioner is advised that he has the right to submit declarations, affidavits, or any other relevant evidentiary materials with his Second Supplemental Statement. All affidavits and declarations must be signed under penalty of perjury by persons having personal knowledge of the facts stated in the

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affidavits or declarations. Petitioner is further advised that if he fails to meet his burden for statutory and/or equitable tolling, the Court may recommend that the Petition be dismissed for failure to comply with the applicable limitations period.” Id. at 5.

As of today, however, Petitioner has failed to respond to the Court’s October 30, 2015 Order.

Therefore, Petitioner is **ORDERED TO SHOW CAUSE**, within **thirty (30) days** of the date of this Order, or by no later than **March 17, 2016**, why this action should not be dismissed for his failure to comply with Court orders and/or for his failure to prosecute pursuant to Fed.R.Civ.P. 41(b). Petitioner may discharge this Order by filing a Second Supplemental Statement that complies with the Court’s October 30, 2015 Order .

Petitioner may also request a voluntary dismissal of this action pursuant to Federal Rule of Civil Procedure 41(a). A Notice of Dismissal form is attached for Petitioner’s convenience. However, Petitioner is advised that any dismissed claims may be later subject to the statute of limitations under 28 U.S.C. § 2244(d)(1), as amended by AEDPA, which provides that “[a] 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State Court.”

Petitioner is expressly warned that the failure to file a timely file a response to this Order will result in a recommendation that this action be dismissed with prejudice for his failure to comply with Court orders and/or for his failure to prosecute. See Fed.R. Civ. P. 41(b).

Initials of Preparer	<div style="display: inline-block; text-align: center;">0</div> <div style="display: inline-block; text-align: center; vertical-align: middle;">:</div> <div style="display: inline-block; text-align: center;">0</div>
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